

**DEPARTMENT OF STATE REVENUE**

**LETTER OF FINDINGS NUMBER: 99-0514P**

**Riverboat Tax**

Liabilities Nos. 99-0002030, 99-0002032, 99-0002029, 99-0002660

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**ISSUE(S)**

I. **Tax Administration** – Penalty

**Authority:** IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

Taxpayer protests the penalty assessed.

**STATEMENT OF FACTS**

Taxpayer, at hearing on November 18, 1999, protested the penalty assessed on four late filed EFT returns and states that in addition to beginning work for the company in May 1999, there was a transition, and no one in the financial accounting section to handle the financial aspect.

Taxpayer began business in Indiana in June 1996. Taxpayer is required to remit Riverboat Tax on a daily basis. Taxpayer called the Department to advise that there was a problem with transferring the January 25, 1999 and May 27, 1999 riverboat taxes. The department did not issue penalty liabilities, thereby waiving the penalties. Taxpayer protested late payment liabilities for June 18, 1999, June 19, 1999, June 20, 1999, and July 29, 1999. The EFT section's Director, in a letter dated September 13, 1999 denied the taxpayer a waiver of the penalties. The taxpayer protested to the Deputy Commissioner and requested a hearing.

I. **Tax Administration** – Penalty

**DISCUSSION**

At issue is whether the taxpayer was negligent when it failed to timely remit its EFT payments.

Taxpayer has had several problems since January 1999 and the department issued no late liability

billings for payments due on 1/25/99 and 5/27/99. On August 20, 1999, taxpayer protested, to the Collection Division, four additional late payment liabilities. On September 13, 1999, the EFT Section advised the taxpayer that negligence was present and the penalty waiver was denied. On September 22, 1999, the taxpayer wrote the Deputy Commissioner to request a hearing.

At hearing, taxpayer states there are two factors which contributed to the problem of remitting tax timely, i.e. 1) The bank's local offices are terribly run and, 2) during this period, the telephone company converted the telephone system and in the process had difficulty with the phone system. Taxpayer states it also sent a fax to the bank as back up but they were cut and they had no good processes in place.

Although the taxpayer has had several problems and has had them since January 1999, it did not contact the department until after the late payment liabilities were issued.

Taxpayer was assessed a ten percent (10%) penalty because it made late EFT payments and had no controls in place to assure that no further late payments would be remitted. In the department's letter dated September 13, 1999, the taxpayer was denied penalty waivers because it failed to have established procedures in-house and with the bank to assure no future tax payments would be late. The department already waived penalties for January and May 1999 before liabilities were issued. Taxpayer was also granted a penalty waiver for October 7, 1999 and October 9, 1999. Taxpayer's history also indicates late payments for withholding and sales taxes. The department does not believe reasonable cause has been established to waive the penalties. In the four instances, here, no one from the company contacted the Department of Revenue to alert it to the fact the payments would be late and ask for assistance.

Taxpayer did not show reasonable cause to allow the department to waive the penalties.

### **FINDING**

The taxpayer's protest is denied.